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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 CORY CUMMINS, et al.,

11 Plaintiffs,

12 v.

13 SOLGEN POWER, LLC, et al.,

14 Defendants.

CASE NO. C23-5363JLR

ORDER

15 Before the court is Defendants Solgen Power, LLC and Verity Credit Union's
16 (collectively, "Defendants") motion to dismiss Plaintiffs Cory and Savannah Cummins's
17 (the "Cummins") complaint pursuant to Federal Rule of Civil Procedure 12(b)(6), or
18 alternatively, to compel arbitration. (Mot. (Dkt. # 14).) For the reasons explained below,
19 the court DENIES Defendants' motion as moot.

20 Defendants filed their motion to dismiss the Cummins's original complaint on July
21 25, 2023. (*See generally id.* (citing Compl. (Dkt. # 1)).) The Cummins filed an amended
22 complaint on August 15, 2023. (*See Am. Compl.* (Dkt. # 15).) A plaintiff may amend

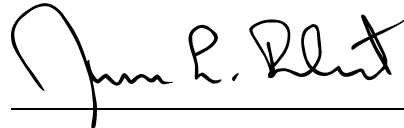
1 their complaint once as a matter of course party within 21 days after service of a motion
2 to dismiss pursuant to Federal Rule of Civil Procedure 12(b). Fed. R. Civ. P. 15(a)(1)(B).
3 Thus, the Cummins's amended complaint was timely filed. *Id.*

4 “It is well-established in [the Ninth C]ircuit that an ‘amended complaint
5 supersedes the original, the latter being treated thereafter as non-existent.’” *Ramirez v.*
6 *Cnty. of San Bernardino*, 806 F.3d 1002, 1008 (9th Cir. 2015) (quoting *Forsyth v.*
7 *Humana, Inc.*, 114 F.3d 1467, 1474 (9th Cir. 1997), *overruled on other grounds by Lacey*
8 *v. Maricopa Cnty.*, 693 F.3d 896, 927-28 (9th Cir. 2012)). As a result, “the original
9 pleading no longer performs any function.” *Id.* (quoting *Ferdik v. Bonzelet*, 963 F.2d
10 1258, 1262 (9th Cir. 1992)). Because Defendants’ motion to dismiss targets the original
11 complaint, which is no longer in effect, the motion to dismiss is moot. *Id.* (“Because the
12 Defendants’ motion to dismiss targeted the Plaintiff’s First Amended Complaint, which
13 was no longer in effect, we conclude that the motion to dismiss should have been deemed
14 moot before the district court granted it.”); *see also, e.g., Wagner v. Choice Home*
15 *Lending*, 266 F.R.D. 354, 360 (D. Ariz. 2009) (“As both motions pertain to Plaintiff’s
16 original complaint and Plaintiff has since filed an Amended Complaint, both Motions are
17 now moot.”).

18 Accordingly, the court DENIES as moot Defendants’ motion to dismiss the
19 Cummins’s original complaint, or alternatively, to compel arbitration (Dkt. # 14). This
20 denial is without prejudice to Defendants filing a motion to dismiss or to compel
21 arbitration directed at the Cummins’s amended complaint.

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1 Dated this 16th day of August, 2023.

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4 JAMES L. ROBART
5 United States District Judge
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